

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK DAVID CHANLEY,

Defendant.

Case No. 2:07-cr-00150-LDG

ORDER

The defendant, Mark David Chanley, has submitted several documents to the Court relative to a petition to vacate, set aside, or correct sentence by a person in federal custody pursuant to 28 U.S.C. §2255. A review of the Court's docket indicates that the §2255 motion is filed as Document #234.

Initially, the Court would note that the defendant has moved for the undersigned to recuse himself from considering the defendant's §2255 motion (#238). Recusal or disqualification of a judge is governed by 28 U.S.C. §§ 144 & 455. A defendant seeking recusal must set forth facts and reasons for the belief that improper bias or prejudice exists. 28 U.S.C. § 144. The standard for recusal under §§ 144 & 455 is "whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." *United States v. Studley*, 783 F.2d 934, 939

1 (9th Cir. 1986). A significant, and often determinative factor in recusal jurisprudence is
2 whether the source of bias is extrajudicial. *Liteky v. United States*, 510 U.S. 540, 114 S.Ct.
3 1147, 127 L.Ed.2d 474 (1994). "Opinions formed by the judge on the basis of facts
4 introduced or events occurring in the course of the current proceedings, or of prior
5 proceedings, do not constitute a basis for a bias or partiality motion unless they display a
6 deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.* at
7 555. When presented with a motion for recusal, the challenged judge should rule on the
8 legal sufficiency of the motion. *Toth v. Trans World Airlines, Inc.*, 862 F.2d 1381, 1388 (9th
9 Cir. 1989). Chanley has not demonstrated or alleged judicial bias, as he has not shown
10 "that the judge's conduct reflected a disposition, based on extrajudicial sources, to treat
11 him unfairly." *Hansen v. Commissioner*, 820 F.2d 1464, 1467 (9th Cir. 1987). Accordingly,
12 the Court will deny the defendant's motion to disqualify (#238) the undersigned from this
13 matter.

14 The defendant has submitted several documents (## 230, 237, 240) seeking leave
15 to supplement or amend his §2255 motion, including one such motion that the defendant
16 filed several months prior to the filing of his §2255 motion. The Court will grant each of the
17 motions and will treat the arguments filed in Documents ## 230, 237, and 240 as
18 supplementing or amending the §2255 motion as filed at #234.

19 The defendant moves for a hearing (#239) on his §2255 motion. At this time,
20 consideration of whether a hearing is required is premature, as the government has not yet
21 had an opportunity to respond to the arguments and assertions of the defendant.
22 Accordingly, the court will deny the motion for a hearing.

23 Finally, the defendant moves to seal (#241) all proceedings, motions, and pleadings
24 regarding his §2255 motion. The Court will deny the motion. Therefore,
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1 THE COURT **ORDERS** that Defendant's Motion to Disqualify (#238) the
2 undersigned is DENIED;


3 THE COURT FURTHER **ORDERS** that Defendant's Motions for Leave to Amend or
4 Supplement his 28 U.S.C. §2255 motion or memorandum in support of that motion (##
5 230, 237, 240) are GRANTED. Documents ## 230, 237, and 240 will be treated as
6 supplements to, or amendments of, the Defendant's Motion Pursuant to 28 U.S.C. §2255
7 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (filed at #234).

8 THE COURT FURTHER **ORDERS** that Defendant's Motion for Hearing (#239) is
9 DENIED.

10 THE COURT FURTHER **ORDERS** that Defendant's Motion to Seal 28 U.S.C. §2255
11 Motions, Pleadings and Judgments (#241) is DENIED.

12 THE COURT FURTHER **ORDERS** that the United States shall file an opposition or
13 otherwise respond to Defendant's 28 U.S.C. §2255 Motion (as set forth at #234, and
14 supplemented or amended by ## 230, 237, and 240) not later than Friday, April 5, 2013.

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16 DATED this 29 day of January, 2013.

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19 Lloyd D. George
20 United States District Judge
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